

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>**

**CASE NO. A-6533**

**PETITION OF JACQUES COUGHLIN**

**OPINION OF THE BOARD**

(Opinion Adopted September 13, 2017)  
(Effective Date of Opinion: September 21, 2017)

Case No. A-6533 is an application for a variance needed to allow construction of a one-story frame addition (porch) over an existing patio. The proposed construction requires a variance of 4.69 feet, as it is within 15.31 feet of the rear lot line. The required setback is 20 feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on September 13, 2017. Petitioner Jacques Coughlin appeared at the hearing pro se.

Decision of the Board: Variance **DENIED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 22, Block C, Saratoga Village Subdivision, located at 613 Ray Drive, Silver Spring, MD, 20910, in the R-60 Zone. The subject property is rectangular in shape, and 5,017 square feet in size. While the Petitioner's Justification Statement acknowledges that the subject property is "in a subdivision where most lots are of comparable size," and that "[t]he property is surrounded by similar lots on three sides, with its fourth (short) side opened to the street," his variance application indicates that strict application of the Zoning Ordinance causes him a practical difficulty on account of his property's "shallowness." See Exhibits 1 & 3. The Zoning Vicinity Map confirms that lots surrounding the subject property are also rectangular in shape and similar (or smaller) in size. See Exhibit 8.
2. In 1994, the Petitioner was granted a variance from the front lot line setback of this property to allow enclosure of an existing front porch. See BOA Case No. A-4204.
3. The Petitioner's Justification Statement describes the proposed construction as "extend[ing] from the rear of the house in an oval configuration, so that its apex would extend out to 16 feet from the rear property line." It states that "[t]he proposed screened

one-story structure would cover an existing stone patio that is oval in shape. Because of its oval shape, roughly 20% of the new structure's screened surface would encroach into that setback – by 4.69 feet – along the patio's long curved side." The Petitioner's Justification Statement further notes that:

Architectural and environmental factors will reduce the effect of the encroachment on the neighboring property to the rear:

- The curved oval shape of the structure makes the encroachment taper off as the structure curves away from the rear property line and towards the house.
- The single-story structure has a roof with a gentle sloping profile that slims the overall volume of space and therefore its visual appearance.
- The rear and side property lines are lined by trees and tall bushes, as well as a 6-foot wood fence on one side. Hence the current view into the rear of the property from neighboring lots is already limited. As a result, only upper portions of the proposed structure would actually be visible from neighboring yards during most the year.

The Petitioner estimates in his Justification Statement that "[b]y virtue of its low profile and curved shape, 75% to 80% of the proposed structure will remain clear of the 20 feet setback, thus preserving the residential character of the neighborhood, as well as ... the integrity of [his] neighbors' yards." See Exhibit 3.

4. The Petitioner states in his Justification Statement that the construction of this porch is necessary to enable him to use his patio "during many months of the year when the mosquito population makes it very difficult to use the space without putting on strong insect repellent – deet, a known toxic chemical – and petitioner prefers to avoid pesticides which might harm pollinators and other desirable insects." See Exhibit 3.

5. The record contains five letters of support for the proposed construction from the Petitioner's abutting and confronting neighbors. See Exhibits 7(a)–(e).

6. At the hearing, the Petitioner testified that like other lots in the neighborhood, his property is not large. He testified that his property has a back yard with a 20-foot setback, and that in the early 1990's, he had constructed the half-circle patio that he now wishes to cover with a screened porch. He testified that about 4½ feet of the planned porch – the apex of the half-circle design – would encroach into the setback. He testified that while in previous years he has been able to enjoy his patio extensively, in recent years the increasingly large population of mosquitoes has diminished his ability to do that.

When asked by the Board what makes his property unique from others in the neighborhood, Mr. Coughlin testified that his property is better screened. When asked if there were alternatives to what he was proposing, Mr. Coughlin testified that he could stop the porch at the setback line, but that that would complicate construction and would not be aesthetically pleasing. Pursuant to additional Board questioning, Mr. Coughlin testified that his neighborhood is a neighborhood of small cape cods, most of which were built in the 1930s and have since been improved. He testified that some have screened

porches, and that some of the improvements extend into the setbacks, citing his own front vestibule (which was constructed with a variance) as an example. He testified that he had shared the plans for his screened porch with all of his direct neighbors and, noting again that his property and his neighbors' properties are somewhat shielded from one another, testified that his neighbors support his variance request.

Finally, Mr. Coughlin reiterated that he lives in a neighborhood with small lots. He stated that he would like to make full use of his property, and that a screened porch would allow him to do just that.

## CONCLUSIONS OF LAW

1. Section 59-7.3.2.E of the Montgomery County Zoning Ordinance, "Necessary Findings," provides that in order to grant a variance, the Board of Appeals must find that:

- (1) denying the variance would result in no reasonable use of the property; or
- (2) each of the following apply:
  - a. one or more of the following unusual or extraordinary situations or conditions exist:
    - i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
    - ii. the proposed development uses an existing legal nonconforming property or structure;
    - iii. the proposed development contains environmentally sensitive features or buffers;
    - iv. the proposed development contains a historically significant property or structure; or
    - v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;
  - b. the special circumstances or conditions are not the result of actions by the applicant;
  - c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;
  - d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
  - e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Section 59-7.1.1 of the Zoning Ordinance provides that the applicant has the burden of production and has the burden of proof by a preponderance of the evidence on all questions of fact.

2. Based on the record in this case, the Board notes that there was no attempt to argue the standard in Section 59-7.3.2.E.1 of the Zoning Ordinance. For this reason, the Board must analyze the instant case under Section 59-7.3.2.E.2 of the Zoning Ordinance. Section 59-7.3.2.E.2 sets forth a five-part, conjunctive ("and") test for the grant of a variance, and thus the Board cannot grant a variance if an applicant fails to meet any of the five elements required by this Section. In the instant case, the Board finds that the requested variance fails to meet Section 59-7.3.2.E.2.a, as follows:

*Section 59-7.3.2.E.2.a.i - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that while the Petitioner has asserted that his property is shallow, the Zoning Vicinity Map shows, and the Petitioner has conceded in his Justification Statement, that the subject property is similar in size and shape to neighboring properties. See Exhibits 3 and 8. Thus the Board finds that the size and shape of the subject property are not peculiar to the subject property. Although the Petitioner testified that the screening of his property differentiates it from neighboring properties, screening is not something that the Board considers under this Section. In addition, the Board finds that the Petitioner has not offered any evidence to indicate that the topography of his property or any other extraordinary condition constrain his ability to locate his porch in accordance with the required rear setback, and indeed has testified that the porch could be reduced in size to meet that setback. Accordingly, the Board cannot find that the variance requested meets Section 59-7.3.2.E.2.a.i of the Zoning Ordinance.

*Section 59-7.3.2.E.2.a.ii – the proposed development uses an existing legal nonconforming property or structure;*

*Section 59-7.3.2.E.2.a.iii – the proposed development contains environmentally sensitive features or buffers;*

*Section 59-7.3.2.E.2.a.iv – the proposed development contains a historically significant property or structure;*

The Board finds that the Petitioner has not presented any evidence to support a finding that the proposed development uses an existing nonconforming property or structure, that it contains environmentally sensitive features or buffers, or that it contains a historically significant property or structure, and thus finds that the variance does not meet Sections 59-7.3.2.E.2.a.ii-iv of the Zoning Ordinance.

*Section 59-7.3.2.E.2.a.v – the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

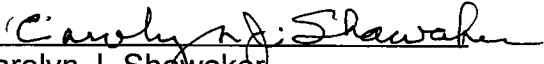
Finally, the Board finds that while the Petitioner did testify that most of the homes in his neighborhood had been improved since their original construction, that some of the homes had porches, and that the improvements on some of the homes, such as his own front vestibule, extended into the required setbacks, he did not attempt to argue or present evidence to indicate that there was a pattern in his neighborhood, historic or traditional, of additions extending into the rear setback. Thus the Board cannot find that the proposed variance meets Section 59-7.3.2.E.2.a.v of the Zoning Ordinance.

The Board notes at this juncture that even if it had found that the Petitioner's property was unique or extraordinary under Section 59-7.3.2.E.2.a of the Zoning Ordinance, the practical difficulty that gives rise to the variance request—the Petitioner's desire for a variance so that he can build a screened porch over an existing patio—does not derive from any unique condition of the property, but rather from the Petitioner's desire to use as a base for his porch a patio that he had constructed. The Board understands the desirability of reusing this existing improvement to his yard, but finds that this is a matter of the Petitioner's preference and convenience, rather than a practical difficulty that would justify a variance. The Board notes the holding of the Court of Special Appeals of Maryland in *Montgomery County v. Rotwein* that a variance applicant must show more than simply that proposed construction would be suitable, or desirable, or could do no harm, or would be convenient or profitable to its owner. See *Rotwein*, 169 Md. App. 716, 730, 906 A. 2d 959, 967 (2006). The Petitioner in this case has testified that he could lessen the depth of his proposed porch, it just wouldn't look as nice and would complicate construction.

3. For all the foregoing reasons, the Board finds that the requested variance cannot be granted under Section 59-7.3.2.E.2.a, and must be denied. Accordingly, the Board does not address the remaining elements of the variance test found in Sections 59-7.3.2.E.2.b-e of the Zoning Ordinance.

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by John H. Pentecost, Vice Chair, with Carolyn J. Shawaker, Chair, and Bruce Goldensohn in agreement, and with Edwin S. Rosado not in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
Carolyn J. Shawaker  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for

Montgomery County, Maryland  
this 21st day of September, 2017.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.